

Governmental units, including State agencies, incur Retailers' Occupation Tax liability when selling tangible personal property to the public for use or consumption. The only exception is the sale of an item of tangible personal property by a governmental unit in the performance of its governmental function. See 86 Ill. Adm. Code 130.2055. (This is a PLR).

March 10, 1999

Dear Ms. xXXXX:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your letter of January 27, 1999. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to the AGENCY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither the AGENCY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

I am writing to request your legal opinion as to the AGENCY tax liability with regard to its tire recycling sales. I would appreciate your assistance in identifying both the tax liability and the proper procedures for compliance.

AGENCY utilizes PERSONS to reclaim automobile tire debris from unregulated dumping sites in Illinois. The salvaged tires are sorted by the PERSONS along with other scrap tires sold or given to AGENCY Correctional Industries from state and county agencies. The tires are then shredded into chips. The chips can be recycled to create a tire-derived fuel. A STATE company is currently purchasing the tire chips and reselling them to an electric company operating out of STATE and Illinois. The electric company is the final consumer.

BUSINESS also operates a tire recapping operation. Large used tires are shaved, made flat and a new piece of rubber is placed on them. The recycled-recapped tires are then sold to the final consumer.

I previously contacted by phone PERSON of the Sales Tax Division of the Illinois Department of Revenue regarding this issue. She was of the opinion that AGENCY would incur Retailers' Occupation Tax liability for the sale of the tire chips, whether sold in state or out of state.

March 10, 1999

I am attaching a copy of an Illinois Department of Revenue Letter Ruling (#94-0543) on the subject of sales tax liability for shredded tires sold for use as a heating fuel and the Illinois Administrative Code section on Sales by Governmental Bodies (86 IL ADC 130.2055).

AGENCY wishes to be in complete compliance with any applicable tax liability with regard to the above operations and seeks your assistance in determining what taxes are applicable and what steps must be taken to comply. Your assistance is greatly appreciated.

SALES BY STATE AGENCIES

The Illinois Retailers' Occupation Tax Act imposes a tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. See the enclosed copy of 86 Ill. Adm. Code 130.101. Since August 1, 1961, governmental units, including State agencies, incur Retailers' Occupation Tax liability when selling tangible personal property to the public for use or consumption. The only exception is the sale of an item of tangible personal property by a governmental unit in the performance of its governmental function. See the enclosed copy of 86 Ill. Adm. Code 130.2055. For example, sales of license plates by the Secretary of State are nontaxable sales made in the direct performance of a governmental function. The reasoning behind this is to make sales by governmental units taxable that are not in the direct performance of their governmental function to ensure that governmental units do not have a competitive advantage when selling items which are also sold by Illinois retailers.

TIRE CHIPS

We believe that the sale of tangible personal property such as "tire chips" by the AGENCY is not a sale by that Department in the performance of its governmental function. These types of sales are subject to liability under the Retailers' Occupation Tax Act. When retailers make sales of tangible personal property in Illinois, they must either remit tax, or document an exemption. One such exemption is a sale for resale.

Your letter states that a STATE company is currently purchasing the tire chips and reselling them to an electric company operating out of STATE and Illinois. Based upon this information, the STATE company is purchasing the tire chips for resale and should provide the AGENCY with Certificates of Resale or a Blanket Certificate of Resale. See the enclosed copy of 86 Ill. Adm. Code 130.1405. If the STATE company does not make retail sales in Illinois, it can obtain a Resale Number which will allow it to provide suppliers with Certificates of Resale when purchasing items in this State for resale. If these sales for resale are properly documented, the AGENCY will incur no the Retailers' Occupation Tax liability on those sales.

March 10, 1999

RECAPPED TIRES

Please note that we are answering this question under the assumption that the AGENCY owns the large used tires prior to them being recapped. In other words, a customer does not bring in his own tire to be "recapped," but instead purchases a recapped tire from the Department.

We believe that the sale of tangible personal property such as recapped tires by the AGENCY is not a sale by that Department in the performance of its governmental function. These types of sales are subject to liability under the Retailers' Occupation Tax Act. Since the sales are to the "final consumer" as described in your letter, the resale exemption would not apply. However, depending upon the use by the purchaser, other exemptions may apply. Sales of the recapped tires may be exempt from the tax if they are to interstate carriers for hire for use as rolling stock moving in interstate commerce. See the enclosed copy of 86 Ill. Adm. Code 130.340. Some sales may also be exempt if the purchaser uses the tires on qualifying farm machinery and equipment. See the enclosed copy of 86 Ill. Adm. Code 130.305. Further, some of the sales may also be exempt if those sales are to governmental bodies that have active exemption numbers issued by the Department. See the enclosed copy of 86 Ill. Adm. Code 130.2080.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Bill Lundeen
Chief Counsel

BL:TDC:msk
Enc.